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August 1, 2008

Via Federal Express #7984 8977 9073
Ms. LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
12100 Park 35 Circle
Austin, Texas 78753

Re: Docket No. 2007-0879-UCR; Flagship Hotel, LTD., vs. The City of Galveston; In the Texas Commission on Environmental Quality Austin, Texas.

Dear Ms. Castañuela:

Please find enclosed an original and eleven copies of **The Flagship Hotel, Ltd.'s Brief on the SOAH's Certified Question Regarding TCEQ's Jurisdiction** for filing in the above-referenced matter.

Please file-stamp an extra copy and return same to the undersigned in the enclosed self-addressed, postage pre-paid envelope. By copy of this letter, all counsel of record are being notified of this filing.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to call me.

Sincerely,

Millard A. Johnson

MAJ:cec

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IN THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY
AUSTIN, TEXAS

FLAGSHIP HOTEL, LTD.	§	
	§	
vs.	§	
	§	
	§	
THE CITY OF GALVESTON	§	

THE FLAGSHIP HOTEL, LTD'S BRIEF ON THE SOAH'S CERTIFIED QUESTION REGARDING TCEQ'S JURISDICTION

TO THE HONORABLE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

FLAGSHIP HOTEL, LTD. (the "Flagship") files this Brief on the State Office of Administrative Hearing's Certified Question Regarding TCEQ's Jurisdiction and in support thereof, would show the Texas Commission on Environmental Quality as follows:

1. Pursuant to Commission Rule 90.131(b), the State Office of Administrative Hearings ("SOAH") has certified the following question to the Texas Commission on Environmental Quality ("TCEQ" or the "Commission"):

> Whether the Commission, pursuant to § 13.042(d), has exclusive appellate jurisdiction to review orders of a governing municipality, including those orders pertaining to the municipality's own water and sewer service customers.

2. The SOAH also has recommended that TCEQ answer the certified question in the affirmative on the basis that four appellate courts have "concluded" that TCEQ has exclusive appellate jurisdiction under section 13.042(d). The SOAH concedes that this is **not** the law of the case because TCEQ was not a party to any of the appeals, but claims that the four appellate cases are "authoritative and precedential" and that only the Texas Legislature could revise the Texas Water Code to read, "in no uncertain terms what [TCEQ] argues it does mean." With all due respect to the SOAH and the appellate courts, the SOAH is wrong.

3. The Texas Legislature has already spoken in no uncertain terms in the Texas Water Code that TCEQ does **not** have appellate jurisdiction over a rate dispute involving a **municipally owned utility**. Section 13.042(d) of the Texas Water Code grants TCEQ the authority to hear appeals subject to two express limitations:

1) the authority is limited to "those municipalities"; and

2) the authority is also limited to what is provided in chapter 13 of the Texas Water Code. "Those municipalities" is a reference to water and sewer utilities, which, by statutory definition, exclude a **municipally owned utility.**

Section 13.043 of the Texas Water Code provides that a party to a rate proceeding can appeal a decision to TCEQ, but cannot appeal a decision of a **municipally owned utility** to TCEQ. Thus, the Texas Water Code, on two separate occasions, unambiguously states that TCEQ **does not have jurisdiction** to hear an appeal from a **municipally owned utility.**[1]

4. The opinions of the Courts of Appeals are not "authoritative and precedential" when they simply fail to consider the unambiguous express provisions of the Texas Water Code. Accordingly, the Flagship respectfully requests that TCEQ follow the express provisions of the Texas Water Code, instead of following an erroneously and sloppily decided line of appellate opinions that simply ignore express provisions of the Code to reach a result which is insupportable.

A. TCEQ must construe the Texas Water Code's grant of appellate jurisdiction in light of the entire statute

5. When interpreting a statute, courts consider the entire statute, not simply the disputed portions. *Bridgestone/Firestone, Inc. v. Glyn-Jones,* 878 S.W.2d 132, 133 (Tex.1994); *Berel v. HCA Health Servs. of Texas, Inc.,* 881 S.W.2d 21, 25 (Tex. App.—Houston [1st Dist.] 1994, writ denied). Each provision must be construed in the context of the entire statute of which

[1] It is undisputed that the City is a municipally owned utility.

it is a part. *Bridgestone/Firestone,* 878 S.W.2d at 133. Courts cannot adopt a construction that would render a law or provision absurd or meaningless. *See Chevron Corp. v. Redmon,* 745 S.W.2d 314, 316 (Tex.1987); *Mueller v. Beamalloy,* 994 S.W.2d 855, 860 (Tex. App.—Houston [1st Dist.] 1999, no pet.).

6.

B. The Texas Water Code sets forth two express limitations on TCEQ's appellate jurisdiction

7. The Texas Water Code unambiguously sets forth TCEQ's appellate jurisdiction. Section 13.042(d) of the Texas Water Code establishes TCEQ's jurisdiction with two limitations:

> **The commission shall have exclusive appellate jurisdiction to review orders or ordinances of those municipalities as provided in this chapter.**

The two stated limitations are:

a) "as provided in this chapter"; and

b) "*those* municipalities."

8. The first limitation makes it clear that TCEQ's appellate jurisdiction only goes as far as is expressly conferred "**in this chapter**," *i.e.* Chapter 13 of the Texas Water Code. Hence, the TCEQ's appellate jurisdiction is subject to any limitations established by Chapter 13. The second limitation—the reference to "***those* municipalities**"—is a reference to a limited set of municipalities referred to in the previous subsections of 13.042. Both of these limitations work to make it clear that the legislature did **not** intend to confer upon TCEQ appellate jurisdiction over ***municipally owned*** utilities.

1. Section 13.043 specifically excludes a municipally owned utility from TCEQ's appellate jurisdiction

9. Sections 13.043(a) & (b) of the Texas Water Code specifically set forth the appellate jurisdiction for TCEQ. Subsection 13.043(a) specifically excludes the City of Galveston:

> Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the commission. **This subsection does not apply to a municipally owned utility.**

(Emphasis added).

8. A municipally owned utility is defined as "any utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities." The City of Galveston meets this definition. In fact, the City has never claimed that it does not. *See* Galveston Municipal Code § 36-16, *et seq.* attached hereto for the Commission's ease of reference. As such, it is plainly clear that the Flagship cannot make an appeal under subsection 13.043(a).

10. Subsection 13.043(b) only applies to a municipally owned utility when the rate payers reside outside the corporate limits of the municipality. Even though the City has argued that this subsection applies to the Flagship, the City has never made any showing that the Flagship resides outside the corporate limits of the City. This is because it is undisputed that the Flagship is situated right in the middle of the City on the seawall, well within the corporate limits of the City of Galveston. Accordingly, neither subsection (a), nor (b) provide the Flagship with the ability to appeal the City's actions. Thus, chapter 13 does not provide TCEQ with exclusive appellate jurisdiction over this dispute.

2. The City is a municipally owned utility and not a water and sewer utility as defined by the Texas Water Code

11. Furthermore, the City is **not one of "*those* municipalities"** as set forth in Section 13.042 of the Texas Water Code. The term "those" does **not** refer to municipally owned utilities. Instead, Section 13.042(a) – (c) speaks of a municipality having exclusive original jurisdiction over services provided by a *water and sewer utility* within its corporate limits and section 13.042(d) grants TCEQ jurisdiction over *those municipalities,* not all municipally owned utilities. It is beyond dispute that a "water and sewer utility" is not synonymous with a municipally owned utility. Section 13.002(23) of the Texas Water Code specifically **excludes** a municipally owned utility from the definition of a "water and sewer utility":

> "Water and sewer utility," "public utility," or "utility" means any person, corporation, cooperative corporation, affected county, or any combination of these persons or entities, **other than a municipal corporation.**

(Emphasis added). Thus, it is beyond dispute that section 13.042 only confers appellate jurisdiction over municipalities that have a "water and sewer utility" and is not intended, especially in light of the specific exclusions in subsections 13.043(a) & (b), to include a "municipally owned utility." It is abundantly clear that the Texas Water Code unequivocally does NOT confer appellate jurisdiction over municipally owned utilities to TCEQ.

C. The Courts of Appeals failed to consider all of the express provisions of the Texas Water Code

12. The SOAH has mistakenly fallen into the misguided trap the Court of Appeals set in *Flagship Hotel, Ltd. v City of Galveston*, 73 S.W.3d 422 (Tex. App.—Houston [1st Dist.] 2002, pet. denied) (hereinafter *Flagship I*). In that case, the appeals court was simply wrong when it adopted a construction of section 13.042 that rendered section 13.043 meaningless. The court's construction ignored, or failed to comprehend the distinction between a "water and sewer

utility" and a "municipal corporation". In *Flagship I,* the court held that section 13.042(d) was dispositive of TCEQ's jurisdiction:

> [W]e conclude exclusive appellate jurisdiction over the City's final disposition of this dispute is vested with the TNRCC.
>
> Flagship contends that, under section 13.042(f) of the Water Code, the TNRCC has no power to reverse a decision by the City to shut off its water. We disagree. Section 13.042(f) provides, as follows:
>
> > This subchapter does not give the commission power or jurisdiction to regulate or supervise the rates or service of a utility owned and operated by a municipality, directly or through a municipally owned corporation, within its corporate limits or to affect or limit the power, jurisdiction, or duties of a municipality that regulates land and supervises water and sewer utilities within its corporate limits, ***except*** *as provided by this code.*
>
> TEX. WATER CODE ANN. § 13.042(f) (Vernon 2000) (emphasis added). As we hold, and as the City concedes, section 13.042(d) vests appellate authority over this dispute with the TNRCC. Section 13.042(f) merely limits the power of the TNRCC to enforce the legislative purpose of the Water Code "to assure rates, operations, and services that are just and reasonable to the consumers and to the retail public utilities." See id. § 13.001.

Id. at 427 (emphasis added).

13. The fatal flaw (or extremely sloppy legal analysis) in the *Flagship I* opinion is the court's incorrect linkage of the phrase "except as provided by this code" with the broad legislative purpose stated in section 13.001 of the Texas Water Code. This was wrong. The phrase "except as provided by this code" is a reference to the **operative sections** of the Water Code. Section 13.043(b)(3) is the "***exception***" referred to above in the quoted § 13.042(f):

> (b) Ratepayers of the following entities may appeal the decision of the governing body of the entity affecting their water, drainage, or sewer rates to the commission:
>
> . . .
>
> (3) a municipally owned utility, if the ratepayers reside outside the

corporate limits of the municipality;

And, as noted above, section 13.043(a) makes it unambiguously certain that TCEQ does not have appellate jurisdiction over a municipally owned utility. The broad legislative purpose set forth in section 13.001 is not an exception to 13.042(f) and does not negate the express instructions of section 13.043(a). Section 13.001 of the Water Code is merely a broad statement of purpose, but is not substantive and excludes virtually nothing. It is axiomatic that the stated broad legislative purpose of a statute cannot be read to control over specific provisions.

14. Finally, none of the other appellate opinions has addressed the meaning of section 13.043. In *Flagship I*, as discussed above, the court solely relied on section 13.042 and never made any reference to section 13.043. The opinion is drafted as though section 13.043 does not even exist. In the subsequent appeal, *Flagship Hotel, Ltd. v. City of Galveston*, 117 S.W.3d 552 (Tex. App.—Texarkana 2003, pet. denied) (hereinafter "*Flagship II*"), the Texarkana Court, again without any analysis or consideration of section 13.043, merely "parroted" the holding of the First Court of Appeals:

> Although the First Court of Appeals' decision only addressed whether the trial court could issue a temporary injunction, it held that the Texas Water Code granted the City exclusive original jurisdiction over such disputes and the [TCEQ] appellate jurisdiction. *See Flagship Hotel, Ltd.*, 73 S.W.3d at 427. We find the First Court of Appeals' reasoning persuasive, and Flagship must exhaust its administrative remedies through [TCEQ].

Id. at 563. Again, neither court even mentions section 13.043.

15. The other two appellate courts also failed to address the application of section 13.043. In *City of Donna v. Victoria Palms Resort, Inc.*, 2005 WL 1831593 *4 (Tex. App.—Corpus Christi August 4, 2005) (not designated for publication), the court provided no analysis whatsoever. It simply concluded that "TCEQ has exclusive appellate jurisdiction to review orders or ordinances of the City." Likewise, in *City of Willow Park v. Squaw Creek Downs, L.P.*,

166 S.W.3d 336, 340 (Tex. App.—Fort Worth 2005, no pet.), the court cited section 13.042 and noted that the water code "confers exclusive original jurisdiction over water service disputes to the municipality and exclusive appellate jurisdiction over such disputes to the Commission." Neither opinion even mentions section 13.043. **Thus, no Texas court has ever properly considered the issue of TCEQ's jurisdiction in light of a complete and proper reading of all the applicable provisions of the Water Code.**

16. In fact, *City of Donna* was not published. Legally, it has *no* precedential value. TEX. R. APP. PROC. 47.7. And, in *City of Willow Park*, the issue before the court was whether the district court had jurisdiction for pre-suit discovery under Rule 202 of the Texas Rules of Civil Procedure. *City of Willow Park* 166 S.W.3d at 341 (holding that the district court had jurisdiction under Rule 202 of the Texas Rules of Civil Procedure). As such, the Willow Park court's discussion concerning the TCEQ's jurisdiction under the Texas Water Code was merely *dicta* – unreasoned and wrong at that. It is simply incorrect to say, as the SOAH alludes, that the four appellate opinions are somehow "authoritative and persuasive" when one is unpublished, another is *dicta*, *Flagship II* offers no independent analysis of *Flagship I* and *Flagship I* completely ignores the meaning of the section 13.043 of the Water Code, which is titled "Appellate Jurisdiction."

CONCLUSION

The Texas Water Code unambiguously denies TCEQ jurisdiction over an appeal of a rate proceeding involving a municipally owned utility. TCEQ is not bound to follow the tortured reading of the Water Code in *Flagship I,* and its blind followers, *Flagship II, City of Donna and City of Willow Park*, because the court simply failed to consider all the relevant provisions (especially the one titled "Appellate Jurisdiction") of the Code. With all due respect to the

SOAH, TCEQ should answer the certified question with a resounding "NO."

REQUEST FOR RULING

The Flagship respectfully requests that, to the extent the Rules permit, the Commissioners issue a dispositive ruling instead of answering the certified question posed by the SOAH. The Flagship initiated this proceeding before the TCEQ on April 4, 2007. On or about April 26, 2007, TCEQ, by letter correspondence from Doug Holcomb, responded that TCEQ did not have jurisdiction over this matter. This effectively left the Flagship without a forum to hear its dispute with the City. The Flagship then requested a hearing on TCEQ's jurisdiction before the State Office of Administrative Hearings. The Flagship again briefed the issue at the request of J. Wood.

Now, J. Wood has sent the issue back to TCEQ as a certified question to assist her in deciding TCEQ's jurisdiction in this matter. J. Wood requested briefing on the issue to be filed by June 6, 2008. The Flagship filed its brief on June 5, 2008. TCEQ then set the matter for public hearing and again requested briefing on the jurisdiction issue be submitted to the Commissioners by August 4, 2008. The Flagship has already prepared three briefs on the jurisdiction issue to TCEQ and/or the SOAH. As such, this brief is substantially the same as the brief the Flagship submitted to TCEQ on June 5, 2008. However, Flagship respectfully requests that the Commissioners make a ruling on TCEQ's jurisdiction instead of answering the certified question. This matter has been before the TCEQ and SOAH for over a year without resolution of the issue of TCEQ's jurisdiction. A ruling from the Commissioners would eliminate further delay. With all due respect to J. Wood, the Flagship requests a final ruling from the Commissioners solely for the purpose of efficiency.

WHEREFORE, the Flagship prays that TCEQ make a ruling on its jurisdiction or, in the

alternative, answer the SOAH's certified in the negative and report to the SOAH that TCEQ does not have jurisdiction over this matter because section 13.043 of the Texas Water Code explicitly excludes municipally owned utilities from TCEQ's appellate jurisdiction and for such other and further relief to which the Flagship may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on the 1st day of August, 2008, a true and correct copy of the above and foregoing instrument has been forwarded by facsimile and certified mail, return receipt requested, to the following counsel of record.

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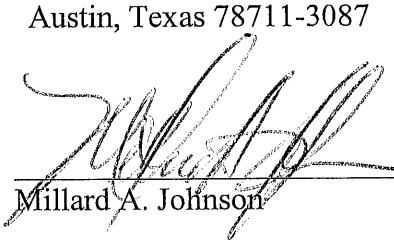

Millard A. Johnson

ARTICLE II. WATERWORKS*

***State law references:** Power of city to provide for water system, Vernon's Ann. Civ. St. art. 1175 (11), (15).

DIVISION 1. GENERALLY

Sec. 36-16. Director generally.

The city's waterworks system shall, unless otherwise expressly set out in this Code, be under the exclusive control of the director of municipal utilities, who shall be hereinafter referred to as the director, or his authorized agent.

(Code 1960, § 23-1)

Sec. 36-17. Entry powers of director.

The director, or his authorized agent, may enter upon any premises served by the city waterworks system at all reasonable times in the performance of his duty. Failure to allow such entry, with written approval of the city manager, shall result in the immediate termination without further notice of all water and sewage service to the premises.

(Code 1960, § 23-2)

Sec. 36-18. Water emergencies.

(a) The city council may properly determine that a water emergency exists, may publicly so declare, and may make all necessary rules, regulations, proscriptions and prohibitions to insure the conservation of water.

(b) Any person violating such rules, regulations, proscriptions and prohibitions shall be guilty of a misdemeanor and, with written approval from the city manager, all water service to such person shall cease during the duration of the water emergency.

(Code 1960, § 23-3)

Sec. 36-19. Fraudulent use of water.

State law shall apply and control in the fraudulent taking, use or measuring of water from the city's waterworks system.

(Code 1960, § 23-7)

State law references: Theft of water, V.A.T.C. Penal Code, § 31.01 et seq.

Sec. 36-20. Fire protection.

(a) Water service supplying dedicated sprinkler systems installed by a sprinkler company approved by the insurance services office need not be metered if the owner so elects. Such unmetered service must be equipped with a standard detector check valve meeting Fire Underwriters' approval and the approval of the director of municipal utilities.

No person shall use water through an unmetered service except in case of fire, make any tap or connection for withdrawing, nor take water from such unmetered service except in case of fire. A charge of two hundred dollars ($200.00) may be made against the owner for each unauthorized use of unmetered fire service except when used for fire-fighting purposes or where there is written authorization from the director of municipal utilities. The owner shall notify the director of municipal utilities whenever an unmetered fire service is used for fire-fighting purposes.

As used herein, a "dedicated fire service" is defined as a fire sprinkler or standpipe system used solely for a fire-fighting purposes. Any fire-protection system utilizing on-site fire hydrants shall not be considered a dedicated fire-protection system.

(b) All undedicated new sprinkler systems and fire hydrant connections installed for fire-protection purposes shall be metered with a water meter of appropriate size, meeting Fire Underwriters' approval, AWWA Standard E703-79, and the approval of the director of municipal utilities.

(c) Any establishment which is equipped with a sprinkler system or fire hydrant connection which was installed prior to metering requirements and not equipped with an approved meter or detector check valve shall be required to install a meter or detector check valve whenever such establishment obtains a building permit for any modifications or additions which exceed fifty dollars ($50.00). All fire-protection meter installations shall be installed at the expense of the property owner.

(d) Water rates for facilities utilizing fire service meters on nondedicated fire service lines shall be established for the following equivalently accurate disk meter:

TABLE INSET:

Fire Service Size (inches)	Minimum Meter Size Charge (inches)
3".....	2
4".....	2
6".....	3
8".....	4
10".....	6

The minimum annual charge for any nondedicated fire service connection shall never be less than five hundred ninety-one dollars and thirty-six cents ($591.36). All unmetered fire-protection cuts shall be billed in accordance with the equivalently accurate disk meter minimum charge based on the size of the unmetered cut which was installed prior to metering requirements.

(e) The rate for all dedicated fire-protection systems shall be two dollars and fifty cents ($2.50) per annum per each one thousand (1,000) square feet, or fraction thereof, of area protected, provided that, this sum shall never be less than one hundred dollars ($100.00) per annum per connection.

(f) Nondedicated fire-protection billings shall be rendered monthly. Dedicated fire-protection

billings shall be rendered annually. Bills shall become due and owing upon receipt. Failure to pay fire-protection billings within the prescribed time will result in termination of both fire-protection service and potable water supply to the premises.

(g) All fire hydrants set on private property which are a part of a private fire-protection system and which are not operated and maintained by the municipal utilities department shall exhibit a permanent bronze tag stating that the hydrant is a privately owned hydrant belonging to (name of owner) and not the property of the city.

(Code 1960, § 23-29; Ord. No. 87-41, § 1, 8-6-87)

Sec. 36-21. General water extension guidelines.

The following general guidelines shall govern extensions of city water service:

(a) The city will make water taps at the prescribed fee only where adequate size mains exist adjacent to the property to be served, and where such taps and anticipated water usage will not be detrimental to existing water users. If the existing water main is more than one hundred (100) feet from the property, the cost of providing service will be the prescribed tap fee plus time and material charges required for extension of main line to the frontage property line of the property desiring service.

(b) Water mains will be installed and taps made only within public rights-of-way and recorded, clear utility easements of not less than ten (10) feet in width.

(c) Where water mains, hydrants or other facilities must be relocated as a result of street or alley abandonment or for other reasons beneficial only to the property owner, the relocation work shall be completed at the total expense of the property owner.

(d) Where new water mains are required for the use of a particular applicant either as a result of distance or volume requirements, the applicant shall pay the total cost of such improvements including construction, materials, equipment right-of-way and engineering. All new water mains shall become the property of the city upon completion and acceptance by the city.

(e) The cost of "loops" to existing mains and fire hydrants located on public property ordered by the city solely for the purposes of reinforcing the existing water system shall be paid by the city. Isolation valves and fittings required for future ties, loops and extensions shall be a part of the contract and paid for by the applicant.

(Code 1960, § 23-33)

Sec. 36-22. City's right to refuse to furnish water.

Nothing contained in this Code shall ever be construed to fix an obligation on the city to furnish water to any person or premises unless expressly required to do so by law.

(Code 1960, § 23-27)

Sec. 36-23. No conflicts with state or federal law.

If any state or federal regulations or requirements conflict with this article or call for more stringent requirements, such state or federal regulations shall be deemed applicable and apply.

(Code 1960, § 23-34)

Secs. 36-24--36-34. Reserved.

DIVISION 2. CONNECTIONS AND METERS

Sec. 36-35. Connection required.

The owner of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes, situated within the city and abutting on any street, alley or right-of-way in which there is now located or may in the future be located a city water distribution main, is hereby required at his expense to connect to the public water supply in accordance with the provisions of this article within ninety (90) days after date of official notice to do so, provided that such public water supply is within one hundred (100) feet of the property line. Where there is no water main in the street or alley abutting upon the premises sought to be supplied with water, the connection shall be made on such terms and under such provisions as the director may prescribe.

(Code 1960, §§ 23-8, 23-33(A))

Sec. 36-36. Location of installation.

(a) Where the water main is laid in the alley abutting the premises to be supplied with water, the service connection shall be constructed to the property line and the meter shall be installed in the alley at the property line or as near thereto as is practical.

(b) Where the water main is laid in the street abutting the premises to be supplied with water, the service connection shall be constructed to the curbline and the water meter shall be installed on the sidewalk at the curb unless otherwise ordered by the director.

(c) All water meter and meter box installations will be installed in accordance with existing grade or elevation at the time of installation unless specific written instructions concerning final grade or elevation are provided at the time tapping fees are paid. The cost of raising or lowering any meter and meter box at a late date in order to conform with final grade or elevation shall be charged to, and paid by the owner.

(Code 1960, § 23-9)

Sec. 36-37. Repairs and maintenance.

(a) Upon installation by the city all water meters installed in the city's water system shall remain the property of the city. The city shall bear the maintenance, repair or replacement cost of such meter installations unless repair work is required due to intentional damage.

(b) Where a leak occurs in the pipeline between the water main and the water meter, the necessary repairs shall be made by the city at its expense.

(c) Consumers shall keep their own service pipe and apparatus in good repair at their own risk and expense.

(Code 1960, § 23-10; Ord. No. 98-47, § 2, 6-25-98)

Sec. 36-38. Meter and tap fee.

There shall be collected for water meters and meter boxes furnished and taps made in the water main of the city the following charges:

(a) For a three-quarter-inch tap, a fee of three hundred fifty dollars ($350.00); such tap shall be the minimum tap size; any additional cost for goods and services furnished by the city shall be determined at the time of installation.

(b) For a one-inch or larger tap the fee shall be based on the cost of the labor, materials and equipment furnished by the city to make the installation.

(c) Meter boxes for three-quarter-inch services shall be installed at no additional cost to the customer, and shall be included in the tapping fee. Larger sized meter boxes shall be furnished by the consumer at his expense, in accordance with city specifications. No three-quarter-inch split services shall be furnished. The minimum tap size shall be three-quarter-inch.

(d) Charges for each five-eighths-inch by three-quarter-inch meter and meter box outside the city shall be determined in accordance with this section. All such items shall become the property of the consumer.

(Code 1960, §§ 23-11--23-13; Ord. No. 79-28, § 1, 4-19-79; Ord. No. 82-42, § 1, 5-6-82; Ord. No. 96-15, § 2, 2-20-96)

Sec. 36-39. Fees for connection and transfer of water service.

The city shall charge a fee of fifteen dollars ($15.00) for the connection of water service, and for the transfer of water service to a new location.

(Ord. No. 96-18, § 2, 2-20-96)

Secs. 36-40--36-49. Reserved.

DIVISION 3. WATER SERVICE

Sec. 36-50. Application.

Written application for the introduction or supply of water to any premises shall be made on forms provided by the city. All information required by said form shall be furnished prior to the introduction or supplying of water. All applicants for water service to a premises shall assume full responsibility for all monies due as a result of said water service application.

(Code 1960, § 23-17)

Sec. 36-51. Security deposit.

(a) There is hereby delegated to the city manager the full authority to determine the amount and type of security required prior to the furnishing of water to any premises or person. The amount may be based on a fixed schedule or on an individual basis. The type of security may be a cash deposit or a bond with an appropriate number and type of sureties. The city risk manager shall have full authority to determine the adequacy of the bond and the sufficiency of the sureties.

(b) Upon establishing a payment history of twelve (12) consecutive months satisfactory to the customer service supervisor the security held by the city shall be returned to the customer.

(c) Security for payment as applicable to commercial accounts shall be governed by the

provisions of subsection (a) above.

(Code 1960, § 23-18; Ord. No. 99-34, § 2, 4-8-99)

Sec. 36-52. Intermittent users.

(a) Consumers who desire an intermittent supply of water shall be charged regular rates for water furnished to them. "Intermittent user" for the purposes of this section shall mean any consumer who desires water service and the same is not furnished through a meter with a regular, fixed location.

(b) Requests for an intermittent supply of water shall be handled by installing a portable water meter on the fire hydrant nearest the area requiring water service. Requests for portable water meter installations shall be directed to the customer service division. Requests for portable meters will require proper written application as well as placement of a surety deposit equal to the replacement cost of the meter and fittings supplied.

(Code 1960, § 23-30)

Sec. 36-53. Fee for broken or removed locks on water meters.

In the event the city places a lock on a water meter because of a delinquent water bill or for any other reason, and the lock is broken or removed, the person responsible for payment of water service shall pay the city a fee of twenty-five dollars ($25.00).

(Ord. No. 96-16, § 2, 2-20-96)

Secs. 36-54--36-63. Reserved

DIVISION 4. RATES AND CHARGES

Sec. 36-64. Generally.

(a) *Based on consumption.* For water supplied to consumers, the rates charged per one hundred (100) cubic feet shall be as follows:

TABLE INSET:

Quantity	Inside City Limits	Outside City Limits
First 200 cubic feet or Fraction thereof	$8.91	$17.82
Next 3,800 cubic feet	2.33	4.65
Next 46,000 cubic feet	2.48	4.96
Next 950,000 cubic feet	2.52	5.60
All over 1,000,000 cubic feet . . .	3.03	5.53

(b) *Multiple meters.* Where a commercial or industrial water user has more than one (1) metered water service for the same business premises, the rate to be paid may be calculated on the total of the combined consumption. Such calculation based on the total of the combined consumption shall be made only upon the request of the commercial or industrial user and then,

in that event, only where such commercial or industrial user meets all of the standards set forth herein. For purposes of this subsection, "same business premises" shall mean an establishment performing the same function at contiguous locations and having the same management or ownership.

(c) *Emergency cleanup fee.* An emergency, cleanup fee shall be charged each month to each residential water customer. Said fee shall be in the amount of two dollars ($2.00) per residential meter as designated in the offices of the municipal utilities department.

An emergency cleanup fee shall be charged each month to each commercial water customer. Said fee shall be in the amount of ten (10) percent of the monthly water bill billed to each commercial meter as designated in the office of the municipal utilities department.

Revenues collected from the foregoing emergency cleanup fee shall be credited to the city's sanitation fund. The cleanup fee provided for herein shall commence with meter readings as of September 29, 1983 and shall continue for a period of twelve (12) consecutive months.

(Code 1960, § 23-25; Ord. No. 79-92, § 1, 12-20-79; Ord. No. 80-6, § 1, 1-17-80; Ord. No. 80-74, § 1, 9-29-80; Ord. No. 81-84, § 1, 9-17-81; Ord. No. 83-84,§ 1, 9-8-83; Ord. No. 83-94, § 1, 9-22-83; Ord. No. 83-100, § 1, 9-29-83; Ord. No. 83-138, § 1, 12-15-83; Ord. No. 84-37, § 1, 5-31-84; Ord. No. 84-80, § 1, 9-27-84; Ord. No. 85-64, § 1, 9-26-85; Ord. No. 86-48, § 1, 9-25-86; Ord. No. 89-117, § 2, 10-5-89; Ord. No. 92-79, § 2, 9-23-92; Ord. No. 99-80, § 2, 9-9-99; Ord. No. 03-032, § 2, 4-10-03; Ord. No. 04-089, § 2, 9-27-04; Ord. No. 05-055, § 2, 9-15-05)

Sec. 36-65. Minimum bill.

The minimum monthly water bill on each connected meter shall be as follows:

TABLE INSET:

Size of Meter (inches)	Minimum Consumption (Ccf*)	Inside City Limits	Outside City Limits
5/8	2	$8.91	$17.82
1	5	17.85	35.72
1- 1/2	13	35.71	71.40
2	29	71.40	142.80
3	58	142.81	285.63
4	116	285.62	571.22
6 or over	232	571.22	1,142.48

*Hundred cubic feet.

(Code 1960, § 23-26; Ord. No. 79-92, § 2, 12-20-79; Ord. No. 89-117, § 3, 10-5-89; Ord. No. 92-79, § 3, 9-23-92; Ord. No. 99-80, § 3, 9-9-99; Ord. No. 03-032, § 3, 4-10-03; Ord. No. 04-089, § 3, 9-27-04; Ord. No. 05-055, § 3, 9-15-05)

Sec. 36-66. Bulk sales.

The director, or his authorized agent, may from time to time make bulk sales. For the purpose of this section, "bulk sales" shall be construed to mean shipment of water to a single designated premises by motor vehicle tank truck. The rate for such sales shall be thirty dollars ($30.00) per thousand (1,000) gallons for delivery during normal working hours and forty-five dollars ($45.00) per thousand (1,000) gallons for delivery after normal working hours. Normal working hours shall be construed to mean

Monday through Friday, 8:00 am. to 4:00 p.m., excluding holidays observed by the city. Delivery will be confined to areas within the city limits.

(Code 1960, § 23-28; Ord. No. 81-20, § 1, 3-19-81)

Sec. 36-67. Billing and due date.

(a) All bills for water service shall be due and owing upon receipt. Any person desiring to protest such bill for any reason shall do so within seventeen (17) days after the mailing of the same. After such period no person except the city manager may take action on any such protest.

(b) All bills shall be due within seventeen (17) days from date of mailing such bill to the customer. Bills paid on or before the expiration of said seventeen-day period may be paid in the reduced amount, known as the "net amount." Bills paid after said seventeen-day period shall be in the "gross amount," which shall mean the net amount plus an additional ten (10) percent.

(c) The foregoing procedure shall apply to all accounts, whether commercial, residential or governmental.

(Code 1960, § 23-20; Ord. No. 84-19, § 1, 3-29-84)

Sec. 36-68. Liability of multiple consumers with joint meter.

Where more than one (1) pipe or one (1) consumer of city water is supplied through one service connection having but one (1) meter, the applicant for service so supplied shall be held responsible for, and shall pay for all water chargeable to such service and shall pay the expense of keeping the connections in repair.

(Code 1960, § 23-19)

Sec. 36-69. Disconnection for nonpayment and liability for municipal services.

(a) The customer service superintendent of the customer service department, or the customer service superintendent's designee, shall verify delinquent accounts, notify delinquent customers of possible termination, and take the following action to terminate service:

(1) The customer service superintendent, or designee, shall notify delinquent customers of the city's procedures for termination of service, including the procedure customers must follow to contest any decision made by the customer service representative.

(2) The customer service department shall send a delinquent customer written notice referred to as a "ten-day letter." The ten-day letter shall:

a. State that the city's records indicate the customer's bill is delinquent;

b. State that the customer has ten (10) business days to make satisfactory payment before the city takes further action;

c. State in bold type that if the customer fails to make satisfactory payment or contest the billing as provided by these procedures within ten (10) business days from the date of the letter, the city shall terminate water service;

d. Provide the phone number and address of the customer service department; and

e. Advise a delinquent customer of the dispute and appeal procedure.

(3) In addition to the ten-day letter, the customer service department shall send the delinquent customer a separate final invoice stating "final notice."

(4) If a customer advise a customer service representative that the customer does not have funds to pay a delinquent water bill, the customer service representative shall provide the customer a list of social services. This notification shall not stop the termination process.

(b) Procedures for customers disputing termination of water service:

(1) A customer wishing to dispute termination of water service must contact the customer service department within five (5) days of the date of the ten-day letter and advise the department of a dispute. A customer service department representative shall discuss the situation with the customer before the city terminates water service.

(2) If the dispute is not resolved to the customer's satisfaction, the customer may request an appeal to the customer service superintendent. The customer shall request this appeal within three (3) business days of the dispute meeting with the customer service representative. The customer service superintendent shall hear the appeal within two (2) business days of notification of the appeal.

(3) If the superintendent does not resolve the dispute in the customer's favor, the customer service department shall notify the customer in writing that the customer is responsible for the total amount in question.

(4) The customer shall have three (3) business days from the date of the letter in which to pay the delinquency.

(5) If the customer fails to pay the delinquency, the city shall terminate water service.

(6) In addition to termination of water service, the city shall implement all appropriate legal remedies to collect the amount owed.

(7) The customer service superintendent may require an additional deposit from a customer who has service terminated two (2) times within a twelve-month period.

(8) Nothing herein shall restrict the right of a customer at any time to dispute a billing or payment issue that is not related to a notice of termination of water service.

(Code 1960, § 23-4; Ord. No. 93-50, § 2, 5-24-93; Ord. No. 96-17, § 2, 2-20-96; Ord. No. 97-34, § 2, 5-22-97)

Sec. 36-70. Voluntary EMS Contributions.

(a) The city may implement as part of its utility process a program under which the utility collects from its customers a voluntary contribution on behalf of an emergency medical service.

(b) In order to partially defray the costs incurred by the city in providing emergency medical services, a voluntary and elective contribution of three and no/100 ($3.00) dollars may be added to the monthly utility billing statement.

(c) The city shall provide new customers and existing customers on an annual basis, a written statement:

(1) Describing the procedure by which the customer may make a contribution with the customer's bill payment and describing the procedure by which the customer may deduct the voluntary contribution from the bill;

(2) Designating the emergency medical service to which the utility will deliver the

contribution; and,

(3) Informing the customer that a contribution is voluntary.

(d) The city's utility billing statement must clearly state that the contribution is voluntary and that it may be deducted from the billed amount.

(e) Amounts collected under this section are not rates and are not subject to regulatory assessments, late payment penalties, or other utility-related fees.

(Ord. No. 02-005, § 2, 1-10-02)

Secs. 36-71--36-80. Reserved.

DIVISION 5. SUBDIVISION UTILITY STANDARDS*

***Cross references:** Subdivision ordinance, § 29-2.

Sec. 36-81. Scope.

This division shall serve as a guideline for providing or extending water service to newly developed areas, subdivision and/or existing areas which are being subdivided or resubdivided.

(Code 1960, § 20-32-(A))

Sec. 36-82. Definition.

As used in this division, the term "subdivision" means the division of a parcel of land into two (2) or more lots or parcels for the purpose of transfer of ownership or building development, or if a new street is involved, any division of land for agricultural purposes, into lots or parcels of five (5) acres or more, and not involving a new street, shall not be deemed a subdivision. The term includes resubdivision and when appropriate to the context, shall rebate to the process of subdividing or to the land subdivided.

(Code 1960, § 23-32(B))

Sec. 36-83. Procedures.

The following procedures shall serve as a guideline of the administrative requirements which shall be followed prior to actual approval of, or installation of water utility facilities involving development of a subdivision or the subdivision of land:

(a) A preliminary plat shall be submitted to the office of the director of municipal utilities for review and tentative approval of proposed subdivision and improvements. The preliminary plat shall include the following:

(1) The name of the owner and subdivider or persons certifying to the information presented.

(2) The proposed name of the subdivision.

(3) The inscription "Preliminary Plat--For Review Purposes Only".

(4) North Point, date, the total acreage of the proposed subdivision and a scale, which shall not be less than one inch equals one hundred (100) feet.

(5) The boundary of the tract, location and width of all existing or dedicated streets, alleys and other rights-of-way or easements within or adjacent to the proposed subdivision for a distance of two hundred (200) feet in all directions.

(6) If the proposed subdivision is a portion of a tract which is later to be subdivided in its entirety then a tentative master plat of the entire subdivision shall be submitted with the preliminary plat of the portion first to be subdivided.

(7) All physical features of the property to be subdivided, including existing topography, all known sanitary sewers, storm sewers, waterlines, gas mains, power and telephone poles, culverts, water courses and other features pertinent to the subdivision.

(8) A tentative designation of the proposed uses of land within the subdivision, that is, the type of residential use, location of business or industrial sites and sites for churches, schools, parks or other special uses, and an outline of any proposed conditions and limitations to govern the nature of the use of the property.

(9) Lots and building lines.

(10) Adequate information related to proposed streets, improvements, drainage and public utilities shall be furnished sufficient to analyze feasibility of providing such improvements.

(b) Preliminary plats will be reviewed by the director of utilities or his authorized representative, in order to insure water utility installations conform with the current standards, policies and requirements of the municipal utilities department. Approval or disapproval of the preliminary plat proposed water utility installation shall be completed within thirty (30) days from the date filed. Once the preliminary plat receives approval of all other applicable city departments and the planning commission, a final plat must be filed. The final plat must conform substantially with the preliminary plat which was submitted. Review and approval of the final plat will be conducted similar to that of the preliminary plat, and once approval is obtained from the planning commission, the final plat shall be recorded by the city secretary in the office of the county clerk.

(c) Approval of any plat or replat shall be deemed an acceptance of the proposed land dedication. It shall not, however, impose a duty upon the city concerning the maintenance or improvements of any such dedicated parts until such improvements are made by the subdivider and accepted by the city. Prior to final approval by the planning commission of a plat or replat, together with all dedications of lands for public use, the developer and/or owner shall formally agree in writing to provide necessary improvements, in accordance with prevailing requirements of the city. No building permit shall be issued and no service or connection shall be made with any public utility until plat or replat has been approved in the manner and by the authorities provided for in this ordinance.

(d) The acceptance of a final plat by the city does not in any manner obligate the city to finance or furnish any water improvements within the approved subdivision.

(Code 1960, § 20-32(C))

Sec. 36-84. Easements.

Except where alleys twenty (20) feet wide are provided, water utility easements not less than five (5) feet wide on either side of center line shall be provided. Water utility easements less than ten (10) feet wide at ground level will not be acceptable.

(Code 1960, § 23-32(B))

Sec. 36-85. Design standards and extension policy.

(a) All subdivisions shall be provided with an approved water system which conforms with the current standards set forth by the municipal utilities department, the city's plumbing code and the Texas Department of Health Resources.

(b) Standard fire hydrants, meeting city specifications, shall be installed as a part of the water distribution system not more than six hundred (600) feet apart as measured along the streets.

(c) Waterlines shall be installed to serve each lot in all subdivisions within the city limits. Where such connection to a system is not to be made immediately, all taps and service lines shall be installed, extended to the property line, capped off and covered with a water meter box, for installation of a meter at a later date when required. All parts of the water distribution system which will be in the parts of streets intended for vehicular traffic shall be installed prior to the streets being paved.

(d) All construction and installation of water utilities shall be performed in accordance with prevailing ordained standards and specifications as set forth by the city, subject to the inspection and/or supervision by the city.

(e) Once water improvements are completed representatives from the municipal utilities department and/or city engineering department shall inspect and test all water utility improvements prior to acceptance of facilities by the city. Testing and inspection to be conducted shall consist of, but not be limited to:

(1) Physical inspection of facilities to be accepted.

(2) Air testing of lines and joints in order to detect possible defects.

(3) Pressurized water test of lines and joints in order to detect possible defects.

(4) Electronic testing and analysis of lines and joints.

(5) T.V. inspection if deemed desirable.

(6) Any other conventional or innovative means of testing as deemed appropriate by the director of municipal utilities.

(f) Water improvements shall be totally installed, complete and ready to be turned over to the city within eighteen (18) months from the date final approved plat is recorded by the city secretary in the office of the county clerk. The owner, agents or developers shall be required to furnish a detailed cost breakdown, itemizing the cost of all water improvements for which reimbursement will be requested upon acceptance by the city. This itemized construction cost listing shall be prepared by a registered professional engineer and be endorsed by the owners, agents or developers as being truly representative of the improvements being installed. The owners, agents or developers of the subdivision shall be required to place a bond or letter of credit with the city, securing payment of the estimated construction costs necessary to install completely the required water utility facilities.

(g) Failure to meet the terms of construction agreement calling for completion of facilities within the prescribed eighteen (18) month period result in forfeiture of bond, letter of credit or other form of surety accepted by the city.

(h) The facilities, when constructed and installed, shall become immediately the property of the

city, free and clear of all liens, claims and encumbrances once inspected and accepted by the director of utilities and/or the city engineer.

(i) Necessary off-site water extensions shall be made by the developer or subdivider at his expense.

(j) Prior to acceptance of improvements by the city, the owner shall furnish a certificate prepared by his registered professional engineer stating that all such proposed improvements have been completed in accordance with the approved plans and specifications originally submitted and approved.

(k) Upon completion of inspection by the municipal utilities director and the city engineer, and if all work is found to be satisfactorily completed, the city will accept such improvements for maintenance, and issue written notification to the developer so stating formal acceptance. Prior to formal acceptance of facilities the developer shall provide the city with a performance bond equal in amount to the total cost of facilities constructed. This bond shall guarantee that all facilities shall perform as intended without failure for a period of not less than one year from date of acceptance or be maintained or repaired at developer expense.

(Code 1960, § 23-32(D))

Secs. 36-86--36-101. Reserved.